

- In many cases, common sense and courtesy are sufficient to resolve employee disagreements over smoking. If employers and their employees determine that a workplace smoking policy is desirable, the policy should be fair and non-discriminatory. Smoking areas should be well maintained and easily accessible to all employees.
- In workplaces under union jurisdiction, unilaterally imposed smoking policies may infringe upon the collective bargaining rights of employees. There have been a number of cases in recent years where unions have rejected such policies.
- Workplace smoking policies often fail to address the real source of employee discomfort -- inadequate ventilation. Building ventilation systems can become choked with fungus, spores, mold and other allergenic substances. Tobacco smoke lingering in the air is the visible sign of a larger problem of inadequate ventilation -- it is not the problem itself.

ETS Litigation

- Two recent court cases have indicated that the courts will not be receptive to attempts to achieve smoking bans in restaurants and/or workplaces through litigation:
 - In January of this year, a U.S. magistrate judge in Connecticut recommended dismissal of a lawsuit aimed at mandating a smoking ban in fast food restaurants on the basis of the Americans with Disabilities Act (ADA). In her ruling the judge stated that, "It is not reasonable, under the ADA to impose a blanket no-smoking ban on every [fast food restaurant] where there are certain restaurants which reasonably can accommodate a 'no-smoking' area."
 - Also in January, the Fourth Circuit Court of Appeals rejected the claim of a Virginia plaintiff that her employer's failure to provide her with a smoke-free work environment violated her constitutional rights. "We find that this argument is completely without merit, and reject it without further consideration," the Court said. The Court also rejected the plaintiff's claims under the Rehabilitation Act.

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RE: STUDY ON TRACE NICOTINE LEVELS IN FETAL HAIR

We have not had an opportunity to review this study. We assume that its central claim is that detectable levels of nicotine in fetal hair demonstrate infant exposure to tobacco smoke, either through the mother's active smoking or through a non-smoking mother's exposure to ETS.

These kinds of studies have appeared before in the scientific literature and their common contention, namely, that trace levels of nicotine in fetal hair can be used as a marker for tobacco smoke exposures, is speculative. The use of nicotine in human hair is not widely accepted by scientists as a suitable marker for tobacco smoke exposures.

A Canadian study on fetal hair levels of nicotine, published in 1993, reported nicotine levels of 6 nanograms per milligram of hair -- where a nanogram is one billionth of a gram, and a gram is about four hundredths of an ounce -- in the hair of infants born to smoking mothers, and 0.6 nanogram of nicotine in the hair of infants born to non-smoking mothers. The authors reported no significant differences in amounts of nicotine in the hair of infants born to non-smoking

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mothers who were exposed to ETS and infants born to non-smoking mothers who were not exposed to ETS.

That result is not surprising because common foods such as potatoes, tomatoes, eggplant and other fruits and vegetables naturally contain small amounts of nicotine. They are all related to the tobacco plant family. Nonsmokers who are not exposed to ambient nicotine from ETS will nevertheless have detectable levels of nicotine in their body fluids due to dietary ingestion of those common foods. Unless dietary factors are considered, it is impossible to determine whether nicotine detected in body fluids (or fetal hair) results from ambient exposure to nicotine in ETS or from the ingestion of common foods in the (mother's) diet.

Furthermore, nicotine levels from ETS in the ambient air cannot be correlated with nicotine levels in body fluids due to differences in individual rates of metabolism and removal of the substance. So when a study measures a given amount of nicotine in fetal hair or body fluids, one cannot estimate from that number the precise amount of exposure to nicotine, whether its source is exposure to tobacco smoke or the diet.